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November 3, 2014

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**BY HAND DELIVERY**

Office of General Counsel  
Federal Election Commission  
999 E. Street N.W.  
Washington, D.C. 20463

**Re: MUR 6866**

Dear General Counsel:

On behalf of Senator Mark Udall, we submit this response to the complaint filed by Kelly Maher of Compass Colorado. The complaint alleges that Senator Udall made an impermissible solicitation. This allegation is false. The complaint describes a solicitation of funds by Senator Udall that complied with federal amount limits and source restrictions. Both the Federal Election Campaign Act of 1971 ("FECA") and Federal Election Commission (the "Commission") regulations expressly permit federal candidates to make these solicitations. Accordingly, the Commission must dismiss the complaint and close the file.

The complaint alleges that Senator Udall made the following statement while appearing as a special guest at a fundraising event for Crisanta Duran, a candidate for Colorado House of Representatives:

So, she's a 30-something and multiply that by three, that means everybody should have at least written a \$100 check. Cause we need to send her back to the State House and keep the State House in the Majority.

A solicitation such as this one plainly complies with FECA and Commission regulations. FECA provides that a federal candidate or officeholder "shall not ... solicit, receive, direct, transfer, or spend funds in connection with any election other than an election for Federal office or disburse funds in connection with such an election unless the funds are not in excess of the amounts permitted with respect to contributions to candidates and political committees under paragraphs (1), (2), and (3) of section 30116(a) of this title; and are not from sources prohibited by this Act from making contributions in connection with an election for Federal office." 52 U.S.C. § 30125(e)(1) (emphasis added). Commission regulations similarly provide that a federal candidate or officeholder "may solicit ... funds in connection with any non-Federal election,

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only in amounts and from sources that are consistent with State law, and that do not exceed the Act's contribution limits or come from prohibited sources under the Act." 11 C.F.R. § 300.62. Or, as the Commission made clear in 2010, "Federal candidates and officeholders may solicit funds at non-Federal fundraising events, provided that the solicitation is limited to funds that comply with the limitations and prohibitions of the Act and that are consistent with State law." Participation by Federal Candidates and Officeholders at Non-Federal Fundraising Events, 75 F.R. 24375, 24379 (May 5, 2010) (emphasis added).

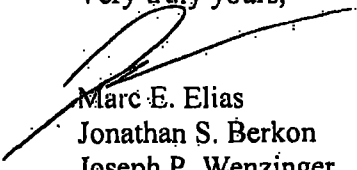
The solicitation described above complies with this rule. According to the complaint, Senator Udall asked each individual attendee for \$100 – well below the \$2,600 limit for federal candidates and within the \$200 limit for state house of representative candidates in Colorado. Colo. Const. Art. XXVIII § 3(1)(b). These funds were requested from individuals only; Colorado law, like federal law, bans corporations and unions from donating to candidates. *Id.* § 3(4)(a). Because the solicitation was limited to funds that comply with the limitations and prohibitions of the Act, and that were consistent with state law, the solicitation was permissible.

The complaint then suggests that this otherwise permissible solicitation was somehow rendered impermissible because Ms. Duran's campaign did not pay fair market value to corporate vendors for food and beverages served at the event. This is absurd. Neither the Act nor Commission regulations require federal candidates appearing at non-federal events to independently verify that the sponsoring campaign has paid fair market value for event costs. Moreover, even if Ms. Duran's campaign accepted a corporate in-kind contribution at the event, that would not preclude a federal candidate from making a solicitation of federally permissible funds at the same event. The Commission has determined on several occasions that "Federal candidates and officeholders may solicit funds at events at which non-Federal funds are being raised if their solicitations are limited to funds that comply with the amount limitations and source prohibitions of the Act." 75 F.R. 24375, 24376 (May 5, 2010).

The solicitation described in the complaint complied with federal law, irrespective of whether Ms. Duran's campaign paid fair market value for the food and beverages served at the event. Because the complaint has not alleged facts that provide a sufficient basis for the Commission to find reason to believe that the Act or Commission regulations have been violated, the Commission must reject the complaint's demand for an investigation. It should instead dismiss the complaint and close the file.

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Very truly yours,



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